IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13193 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESHBHAI C PATEL

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 13193 of 1993

MR TR MISHRA for Petitioner No. 1

MR KH BAXI for Petitioner No. 2

MR MD PANDYA for Respondent No. 1

MR MR GEHANI for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2002

ORAL JUDGEMENT

#. This is a petition under Article 227 of the Constitution of India. The petitioner has challenged the

award passed by the Presiding Officer, Labour Court, Ahmedabad dated 5.4.1993 by which reference of the petitioner workman being Reference No.LCA 62 of 1988 is rejected by the Labour Court.

#. It is the case of the petitioner workman that, he was appointed on muster roll by the GEB and even though he has completed 240 days, without following the provisions of the Industrial Disputes Act, his services were terminated. It is also his case that, his juniors are continued by the Board and they were absorbed as permanent employees by the Board. Before the Labour Court, oral evidence was led by the petitioner workman as well as by the management. On behalf of the respondent Board, one Junior Engineer was examined. He has stated in his evidence that the concerned workman was serving as daily rated employee and on completion of the work, he used to be relieved and he has served for about 48 days. The said fact is stated in para 2 of his evidence which is at page 26. In the cross examination, he has denied that the concerned workman was taken in service in 1984. The Labour Court, after appreciating the evidence on record, came to the conclusion that, so far as reference about other workmen, of which the petitioner has emphasized, is concerned, no evidence has led to substantiate his say, as to when those employees were serving and when they were absorbed and that the order of the Labour Court is not produced on record. The Labour Court has considered the fact that the concerned workman used to be relieved the moment the work was over. It is found that, the petitioner was taken only at the particular job. It is found that, as per the muster roll, the petitioner has served for 48 days only.

#. Considering the facts and circumstances of the case and the evidence on record, therefore, it is found that, since the concerned workman has not completed 240 days in a particular division, he is not entitled to get any benefit even of the circular of the Board. Accordingly, reference was rejected.

#. Mr.Mishra very strenuously argued that, the Labour Court has not properly appreciated the evidence and the finding of fact recorded by the Labour Court is contrary to the evidence on record. He submitted that, when the juniors to the petitioner are continued, the Board should have given the same treatment to the petitioner, and therefore, the action is illegal and arbitrary.

#. However, considering the reasoning given by the Labour Court and considering the evidence on record, it

cannot be held that the petitioner has served for more than 240 days at Ahmedabad Division. Considering the muster roll, the Labour Court has given positive finding of fact that he has put in only 48 days of service at the aforesaid division, and moment the work was over, his services were terminated. The petitioner has not led any other evidence to show that, he has served for more than 240 days in the aforesaid division. Even the services rendered in some other division before 5 - 6 years back, now cannot be included for coming to the conclusion that, in the aforesaid division, the petitioner has served for 240 days in a particular year. Mr.Mishra submitted that the petitioner is willing to serve, even without back wages. However, considering the fact that, services of the petitioner were terminated as back as in 1987, it is not possible even to consider the contention of Mr.Mishra as more than 12 years have passed by this time. After appreciating the evidence on record, the Labour Court has given the aforesaid award, and in my limited jurisdiction under Article 227 of the Constitution of India, it is not possible for me to reappreciate the entire evidence again. Even if the evidence on record is reappreciated, then also, it is difficult to arrive at the different conclusion than the one which arrived at by the Labour Court.

#. Mr.Pandya, learned counsel for the respondent Board has relied upon the decision of the Apex court reported in AIR 2002 SC 1147 and has stated that the workman has not led any evidence to substantiate his say that, he has served for more than 240 days in a particular year. In my view, from the evidence on record, it is established that, he has not served for more than 240 days at the time when his services were terminated from Ahmedabad Division.

#. Under the aforesaid facts and circumstances of the case, no interference of this Court is called for, and, therefore, I do not find any substance in this petition. Hence, this petition is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)
(pathan)